IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 23495 of 2006(V)

PETITIONER:

MEETHALE ILLATH SANKARAN NAMBODIRI,
S/O.NARAYANAN, AGED 62 YEARS,
ANANDASRAMAM P.O., KANHANGAD, KASARAGOD
SANTHIKKARAN, SREE PULLOOR
VISHNUMANGALAM TEMPLE (UNDER SUSPENSION)

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:
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1. THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS
(ADMINISTRATION) DEPARTMENT, KOZHIKODE.

2. THE DEPUTY COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE
ENDOWMENTS (ADMINISTRATION) DEPARTMENT,
KOZHIKODE.

3. THE MANAGER,
SREE PULLOOR VISHNUMANGALAM TEMPLE,
PULLOOR VILLAGE, PULLOOR P.O., KASARAGOD.

BY ADV. SRI.K.SHRIHARI RAO
SMT.N.SHOBHA
SRI. NANDAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/09/2007, ALONG WITH WPC NO. 22474 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: PHOTOSTAT COPY OF THE ORDER DT. 14.07.2006 IN R.P.2 OF 2006 PASSED BY THE FIRST RESPONDENT.

EXT.P2: PHOTOSTAT COPY OF THE ORDER PASSED BY THE SECOND RESPONDENT IN APPEAL PETITION NO. 12 OF 2005.

EXT.P3: TRUE COPY OF THE REPRESENTATION SENT BY THE PETITIONER TO THE THIRD RESPONDENT.

EXT.P4: PHOTOSTAT COPY OF THE ENDORSEMENT BY THE POSTAL AUTHORITIES.

RESPONDENT'S EXHIBITS:

EXT.R3(a): TRUE COPY OF THE DISMISSAL ORDER DATED 07.5.2004 ISSUED BY THIS RESPONDENT.

EXT.R3(b): TRUE COPY OF THE CERTIFIED COPY OF THE DOCUMENT NO.4227/1982 OF THE SRO, HOSDURG.

EXT.R3(c): TRUE COPY OF THE RENT AGREEMENT DATED 22.09.75 BETWEEN THE PETITIONER AND ONE SRI. AMBUNHI.

/True Copy/

P.A to Judge.

V. GIRI , J

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W.P.(C) NO. 23495, 22474 OF 2006

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Dated this the 14th day of September, 2007.

JUDGMENT

Since pleadings are complete in W.P.(C) No. 23495/2006, the same is taken as the leading case and the facts stated herein are as stated in the said writ petition. The parties are also described in accordance with their status in W.P.(C) No. 23495/2007.

2. The petitioner is working as Santhikaran of Sree Pulloor Vishnumangalam Temple functioning under the provisions of the Hindu Religious and Charitable Endowments Act. The petitioner was suspended and later dismissed from service on 07.05.2004. Ext.R3(a) is the order of the Manager (who is the 2nd respondent herein and the petitioner in the connected writ petition) by which the petitioner was dismissed from service. An appeal was preferred by the petitioner before the Deputy Commissioner. Ext.P2 order set aside Ext.R2(a) and directed that the petitioner be reinstated in service with back wages. The contesting respondents filed a revision before the Commissioner of Hindu Religious and Charitable Endowments (Administration) Department, and the revision was dismissed under Ext.P1 order. In Ext.P1 order, the petitioner was directed to be

reinstated in service forthwith. But the Commissioner held that the charges leveled against the petitioner herein were not examined for want of the concerned file. The matter was remanded to the Deputy Commissioner to examine the whole enquiry proceedings and dispose of the same on merit. The writ petition is filed seeking a direction to the contesting respondents to implement Ext.P1 order.

3. W.P.(C) No. 22474/2006 is filed by the Manager of the temple challenging Ext.P1 order to the extent to which it directs reinstatement, I heard learned counsel appearing for the petitioner Mrs. Sanjeetha and the learned counsel appearing for the contesting respondent Mr. K. Shrihari Rao.

4. In Ext.P2 order passed by the Deputy Commissioner, it is noted that neither the enquiry report, nor the proceedings sheet nor the testimony of the witnesses were placed before the appellate authority for verification. The Deputy Commissioner therefore observed as follows:

> "In the absence of these records, I am not in a position to evaluate the rival contentions raised by the parties and verify whether the charges levelled against the petitioner have been proved. The respondent has failed to substantiate his contentions by non-production of the very essential records."

5. The finding that the enquiry report, the proceedings sheet or the testimony of witnesses were not made available to the statutory appellate authority, is reiterated by the Commissioner in Ext.P1 order. It is in these circumstances, that the Commissioner also directed that the petitioner be reinstated in service forthwith. I find that the Commissioner has, at the same time, not ordered the payment of back wages as such, possibly because the validity of the enquiry proceedings has to be considered by the Deputy Commissioner.

6. In the circumstances, it cannot be said that the appellate authority and the revisional authority committed an error of jurisdiction or illegality in directing reinstatement of the petitioner, who was working as Santhikaran. The validity of the enquiry proceedings are to be reconsidered by the Deputy Commissioner. But it could be seen that the enquiry report or the proceedings relating to the enquiry were apparently not placed on record by the Manager, even before the revisional authority. Therefore, there was no occasion for the revisional authority also to consider the contentions raised by the Manager on merits, assuming that the revisional authority could have done so. At any rate it would not be fair or proper to let the petitioner be kept out of service, for the reason that the Manager had failed to produce the enquiry records before the statutory appellate

authority in time. I find that the order of reinstatement is, therefore, justified. Moreover, reinstatement and continuance will only be subject to further orders of the Deputy Commissioner.

7. Mr. K. Shrihari Rao contended that in terms of the service conditions applicable to Santikaran, a person who attains the age of 65 will have to retire on superannuation. He further contended that the petitioner has passed the age of 65. The learned counsel for the petitioner contended that the petitioner has not reached the age of 65 as of now. The findings given by the revisional authority in Ext.P1 order is that the petitioner is aged 62 and the same has not been disproved. It is not necessary to finally consider the findings in this regard because the matter is now pending reconsideration before the Deputy Commissioner. The matter is to be reconsidered by the Deputy Commissioner in terms of Ext.P1 order.

8. For all these reasons, I am of the view that the direction for reinstatement as ordered in Ext.P1 is to be forthwith implemented by the contesting respondent. He shall do the needful within two weeks from the date of receipt of a copy of this judgment. Further proceedings before the appeallate authority, pursuant to the permission effected under Ext.P1 order shall be completed within a period of three months from the date of receipt of a copy of this

judgment. It is open to the parties to produce any additional material before the Deputy Commissioner in the course of hearing of the appeals.

The writ petitions are disposed of accordingly.

V. GIRI, JUDGE.

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